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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-343

DISTRICT 153 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD AND FIBERFIL DIVISION OF DART INDUSTRIES, INC.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY TO MEMORANDUM IN OPPOSITION

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The Opposition tacitly concedes the conflict with the Fifth Circuit.* But it ignores the conflict with this Court's declaration of the law in *NLRB* v. *Magnavox Co.*, 415 U.S. 322, 325 (1974), almost a year after *Len-*

* It takes no notice of our demonstration that the single feature it grasps as distinguishing—that Woods was soliciting fellow employees at another plant of his employer (Op. pp. 1, 4, cf. Pet. pp. 3, 4-5)—is, and was treated below as, irrelevant because both plants are part of the same bargaining unit and are factories, not retail stores (Pet. p. 9, n. 7).

kurt, which the Board nevertheless followed without comment in this case (Pet. p. 5).

In *Magnovox* this Court said (*id.*)

> "The place of work is a place uniquely appropriate for dissemination of views concerning the bargaining representative and the various options open to the employees. *So long as the distribution is by employees to employees and so long as the in-plant solicitation is on nonworking time, banning of that solicitation might seriously dilute § 7 rights.* For Congress declared in § 1 of the Act that it was the policy of the United States to protect 'the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing.' " (Emphasis added.)

In context, the italicized formulation leaves no room for an additional exception—"and so long as the soliciting employees are not off duty."

While the Opposition asserts (p. 3) that the conflict "has not matured to the point where it warrants resolution by this Court," it does not dispute our demonstration (Pet. p. 12), that unless certiorari is granted *in this case,* this Court's view of the law will not even have a chance to prevail.

Respectfully submitted,

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